

estimony of

The Honorable Benjamin Nelson

September 25, 2002

Good morning Mr. Chairman and members of the Committee. I want to thank you for the opportunity to appear before the Committee today as we discuss important issues regarding asbestos litigation.

I also want to thank you, Mr. Chairman and Senator Hatch, for your leadership in bringing together a group of individuals who can share information that may lead to a legislative solution regarding the many issues surrounding asbestos litigation. These issues are a growing concern to people in my state, and I suspect that the members of the Committee have seen the same increase in letters and calls from constituents as I have.

In the early 1970s, lawsuits against asbestos manufacturers opened the door for victims suffering from asbestos-related diseases to be justly compensated for their injuries. When Johns-Manville - the largest asbestos manufacturer - filed for bankruptcy in 1982, there were less than 20,000 asbestos cases, most on behalf of individuals with severe asbestosis or mesothelioma - a vicious asbestos-related cancer. The system worked - sick people and their families were given the financial security they deserved.

But the system isn't working anymore. It's been overwhelmed by a flood of cases; some from individuals who are not yet sick, but could potentially get sick in the future. We don't want to prevent these individuals from recovering down the road, but we also need to work toward allowing those who are sick now, to recover now. With the current docket load, that isn't happening. Over 90,000 new asbestos lawsuits were filed in 2001, representing an increase of 30,000 from the previous year. However, the American Academy of Actuaries estimates that there are only about 2,000 new mesothelioma cases filed each year; another 2,000 to 3,000 cancer cases that are likely attributable to asbestos; and a smaller number of serious asbestosis cases. As a result, we must work toward finding a way to address the lawsuits of seriously ill individuals immediately, without eliminating the ability for those who may become sick in the future from having their case addressed at the appropriate time.

The unfortunate result of these tens of thousands of lawsuits is that people who are seriously sick and dying from asbestos must wait longer to recover less money than they deserve - if they can recover anything at all. After transaction costs and fees for both plaintiff and defense lawyers, only about one-third of the money spent on asbestos litigation reaches the claimants. Moreover, as insurance is depleted and an increasing number of asbestos defendants declare bankruptcy, it is inevitable that many asbestos victims who develop cancer in the future will go uncompensated.

One such victim from my state was Val Johns. Mr. Johns was born and lived his whole life in Bloomfield, Nebraska, in the northeast corner of the state. He and his wife Sharon raised three children there - two still live in the area and have their own families now. For 19 years before his death, Mr. John's maintained the town cemetery.

He served in the US Navy from 1957-60 as an electrician, and he was exposed to asbestos pipe insulation aboard the destroyer USS Charles Ware. Mr. Johns was diagnosed with malignant

mesothelioma in January 2000 and passed away on November 5, 2001. Mr. Johns filed a lawsuit to pay his substantial medical bills and to do something for his wife to support her after his death, but all but one of the companies that made the asbestos he was exposed to were already bankrupt. As a result, the settlement for his family was a fraction of what it should have been. The economic fallout from this situation extends beyond sick victims. Because every company that manufactured asbestos is now bankrupt, plaintiffs have been forced to seek alternative defendants to take their place. According to the RAND Institute for Civil Justice, 300 firms were listed as defendants in asbestos cases in 1983. By 2002, RAND estimates that more than 6,000 independent entities have been named as asbestos-liability defendants. Many of these new defendants are small businesses, located in every community, with little or no connection to asbestos.

I've heard from scores of small businesses in my state - local hardware stores, plumbing contractors, auto parts dealers, lumber yards. None of these businesses manufactured asbestos; none sold or installed asbestos products; but these business and the jobs they create are at stake. They are now afraid that as primary asbestos defendants declare bankruptcy, they will be next in line for the thousands of cases being filed and their businesses will not survive.

As the number of asbestos claims filed each year has nearly tripled in the last five years, the pace of asbestos-related bankruptcies has also accelerated dramatically. Since 1998, more companies have filed for bankruptcy protection than in the previous 20 years combined; and in the first seven months of 2002, 12 companies facing significant asbestos liability went bankrupt - more than in any other three-year period before 1999. Firms declaring bankruptcy since 1998 employed more than 120,000 workers prior to their filing, many of whom were significantly invested in their company's stock, pension and 401(k) plans.

According to Fortune magazine, for example, "[a]t the time of Federal-Mogul's bankruptcy filing [last year], employees held 16% of the company's stock, which had lost 99% of its value since January 1999." It was reported that Federal-Mogul employees lost over \$800 million in their 401(k). Similarly, "[a]bout 14% of Owens Corning's shares - which lost 97% of their value in the two years before its filing - were owned by employees."

I think we can all agree that those individuals with legal claims who are very sick need to be taken care of in the most timely and equitable manner possible. That should be our number one priority. We must also work to ensure that those who are not sick now, but may become sick in the future are not precluded from recovery, and that there are still funds available for such a recovery. And finally, we must consider the unpredictable economic impact the immense amount of pending litigation could have on secondary businesses and companies. The costs associated with increased bankruptcy filings to business owners, employees, and retirees would be devastating. In order to prevent future Enron disasters for our older workers nearing retirement, we must address the very real potential threat and adverse impact this type of litigation can have on our economy if we do not address these inequities now. We cannot afford to see more 401(k) and pension plans become worthless.

I am a strong believer that every American has a right to their day in court. I also believe that people dying of asbestos-related diseases deserve just compensation for themselves and their

families. Achieving the latter does not require a change in our tort system - it requires the restoration of the system's true purpose of providing relief to those who need it most.

Mr. Chairman, I plan to work with you and the Committee for the remainder of the year and in the next Congress to resolve these issues in a fair and comprehensive manner.

Thank you.